



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ruben et al.

Docket No.: PF523P1

Application No.: 09/880,748

Confirmation No.: 5654

Filed: June 15, 2001

Art Unit: 1645

For: Antibodies That Immunospecifically Bind to B
Lymphocyte Stimulator Protein (as amended)

Examiner: P. A. Duffy

APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby request reconsideration of the Patent Term Adjustment indicated on Notice of Allowance mailed on December 21, 2005 for the present application. Applicants believe the correct Patent Term Adjustment is 428 or 374 days, not 354 days. This request is being timely made, as it is submitted after the Notice of Allowance was mailed and not later than the payment of the issue fee. The requirements of 37 C.F.R. § 1.705(b)(1) are satisfied by the Fee Transmittal Sheet enclosed herewith, authorizing payment of the fee set forth in 37 C.F.R. 1.18(e). The requirements of 37 C.F.R. § 1.705(b)(2) are satisfied by the following Statement of Facts, as supplemented by the attached Exhibit B.

STATEMENT OF FACTS

1. Table 1 (below) sets forth the relevant dates (in reverse chronological order) and actions taken by Applicants/Patent Office that are needed to calculate the correct Patent Term Adjustment for present application at the time of paying the issue fee. In addition, the third and fourth columns show the periods of Patent Office and Applicant delay, respectively, in a format similar to that shown in the Patent Term Adjustment History shown in PAIR. What Applicants believe to be incorrect data or calculations in the Patent Term Adjustment History shown in PAIR, a copy of which is attached as Exhibit A, are shown

03/22/2006 MREYEN2 00000001 003425 09800748

03 FC:1455

200.00 DA

with strikethrough text in Table 1. Applicant's corrections to the Patent Term Adjustment History values are shown in the same boxes as underlined text. The data shown in parentheses indicates a possible period of Applicant delay for which the Patent Office did not account. This 54 day period is described further below in paragraph 12.

Table 1: Relevant Dates

Date	Action	PTO Delay	Applicant Delay
12/21/2005	USPTO mails Notice of Allowance	17	
09/28/2005	USPTO mails Advisory Action	↑	
09/27/2005	Applicant submits Supplemental After-Final Amendment	↑	(54)
08/04/2005	Applicant submits After Final response	↑	(↑)
05/04/2005	UPSTO Mails Final Rejection	20	
01/18/2005	Applicant submits Supplemental Response – Clean Copy of Substitute Specification	↑	35
12/14/2004	Applicant Responds to Non-Final Rejection	↑	↑
09/14/2004	UPSTO mails Non-Final Rejection	207 <u>312</u>	
12/05/2003	Applicant files Information Disclosure Statement	↑	46 <u>151</u>
10/20/2003	At the Patent Office Request, Applicants re-submit Response to Restriction Requirement that was originally filed July 7, 2003	↑	↑
10/20/2003 <u>07/07/2003</u>	Applicant files Response to Restriction Requirement	↑	74 ↑
05/07/2003	Restriction Requirement	265	↑
06/15/2001	Application filed	↑	
	Delay Totals	614	186 or (240)

Discrepancy between Dates in Patent Application Information Retrieval System (PAIR) and Actual Dates

2. In PAIR, Applicants' Response to the May 7, 2003 Restriction Requirement is accorded a date of October 20, 2003. However, Applicants submitted their response to the

May 7, 2003 Restriction Requirement on July 7, 2003. On October 20, 2003 Applicants resubmitted a copy of their July 7, 2003 filing in response to a Request by Examiner Cheyne D. Ly, who indicated that the Patent Office had lost its copy of Applicants' July 7, 2003 filing. As evidence that Applicants' Response to the Restriction Requirement should be accorded a date of July 7, 2003, Applicants submit herewith a copy of the return receipt postcard that was date-stamped by the Patent Office on July 7, 2003 itemizing, amongst other things, Applicants' Response (listed as "Provisional Election under 37 CFR 1.143) (Exhibit B). Applicants respectfully request that the date for Applicants' Response to the Restriction Requirement mailed May 7, 2003 be corrected in PAIR to reflect the correct date of July 7, 2003 rather than October 20, 2003.

Period of Adjustment of Patent Term due to Examination Delay under 37 C.F.R. § 1.703 (a) through (e).

3. The Patent Office calculated four periods of Patent Office Delay:
 - I. A delay of 265 days for failure to issue the first Office action within 14 months from the filing date of the application (37 C.F.R. § 1.703(a)(1)).
 - II. A delay of 207 days for failure to issue the first Office Action not later than four months after the date Applicants filed their Response to the Restriction Requirement (37 C.F.R. § 1.703(a)(2)).
 - III. A delay of 20 days for failure to issue the Final Office Action not later than four months after the date Applicants filed their Response to the first Office Action (37 C.F.R. § 1.703(a)(2)).
 - IV. A delay of 17 days for failure to issue the Notice of allowance not later than four months after Applicants' After Final Amendment was filed. (37 C.F.R. § 1.703(a)(3)).

4. Applicants agree with the PTO's calculations for items I, III, and IV above.

5. Applicants disagree with the PTO's calculations for item II above. Applicants submit the correct amount for item II is 312 days. More specifically, because the date accorded Applicants' Response to the Restriction Requirement is incorrect in PAIR, the PTO's calculation of 207 days for Item II above is inaccurate. As explained above in paragraph 2, the correct date that should be accorded to Applicants' Response to the

Restriction Requirement is July 7, 2003. Using this date, the day that is four months after Applicants filed their Response to the Restriction Requirement is November 7, 2003. Thus, the number of days in the period beginning November 7, 2003 and ending on September 14, 2004, the date of mailing of the first office action, is the extent of Patent Office delay for failing to issue the first office action not later than four months after the date on which Applicants submitted their Response to the Restriction Requirement. The number of days between November 7, 2003 and September 14, 2003 is 312 days. Therefore, item II, listed above should be considered a Patent Office delay of 312 days, not 207 days.

6. In view of the foregoing, the correct Period of Adjustment of Patent Term due to Examination Delay under 37 C.F.R. § 1.703 (a) through (e) is the sum of 265 + 312 + 20 +17 days, or 614 days.

Reduction of Period of Adjustment of Patent Term under 37 C.F.R. § 1.704

A. Patent Office Calculations for Applicant Delay

7. The Patent Office calculated three periods of Applicant Delay for failure to engage in reasonable efforts to conclude the processing or examination of an application under the following circumstances:

- V. A delay of 74 days for the period of time that was in excess of three months that was taken to reply to the Restriction Requirement. (37 C.F.R. § 1.704(b)(8))
- VI. A delay of 48 days for submission of a supplemental reply or other paper, (in this case, an Information Disclosure Statement filed on December 5, 2003 other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed (37 C.F.R. § 1.704(c)(8))
- VII. A delay of 35 days for submission of a supplemental reply or other paper, (in this case, an Clean Copy of the Substitute Specification which Applicants had previously submitted in a marked up form in conjunction with their December 14th, 2004 filing) other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed (37 C.F.R. § 1.704(c)(8)).

8. Applicants agree with the PTO's calculations for item VII above.

9. Applicants disagree with the PTO's calculations for item V and VI above. Applicants submit the correct amount for items V and VI, is 0 and 151 days, respectively. More specifically, because the date accorded Applicants' Response to the Restriction Requirement is incorrect in PAIR, the PTO's calculation of 74 and 48 days for Items V and VI above is inaccurate. As explained above in paragraph 2, the correct date that should be accorded to Applicants' Response to the Restriction Requirement is July 7, 2003. July 7, 2003 is within three months May 7, 2003, the mailing date of the restriction requirement. Thus, there was no period of time in excess of three months that was taken to reply to the Restriction Requirement; and so there was no Applicant delay associated with the filing of the response to the Restriction Requirement (Item V).

10. However, Applicants' submission of an Information Disclosure Statement on December 5, 2003 was a submission of a paper that was not expressly requested by the Examiner within the meaning of 37 C.F.R. § 1.704(c)(8). Delay under 37 C.F.R. § 1.704(c)(8) is calculated as the number of the days beginning on the day after the initial reply was filed and ending on the date that the "other paper" was filed, or the period beginning on September 15, 2003 and ending on December 5, 2003 which is equal to 151 days. Therefore, item VI, listed above should be considered a delay of 151 days, not 48 days.

11. It is submitted that the correct sum of Applicant delay for items V, VI, and VII is $0 + 151 + 35$ days or 186 days.

B. Possible Additional Period of Applicant Delay

12. Applicants submitted an After Final Response on August 4, 2005. On September 26, 2005 Examiner Duffy telephoned the undersigned to communicate her decision to mail out an Advisory Action. During the conversation, Applicants came to an agreement with the Examiner as to what was needed to be submitted to make the case allowable. On September 27, 2005 Applicants submitted an Amendment in accordance with the conversation between the undersigned and Examiner Duffy. The Advisory Action the Examiner spoke of on September 26, 2005 was mailed by the PTO on September 28, 2005. A Notice of Allowance was issued on December 21, 2005. Applicants are uncertain if the submission filed September 27, 2005 qualifies as a Supplemental reply other than a reply expressly requested by the Examiner. If the PTO determines that

Applicants' September 27, 2005 submission qualifies as a supplemental reply within the meaning of 37 C.F.R. § 1.704(c)(8), an additional period of Applicant delay should be added to the periods of Applicant delay described above in paragraph 11. The delay for submission of the September 27, 2005 amendment would correspond to the number of the days beginning on the day after the initial reply was filed and ending on the date that the supplemental reply was filed, or the period beginning on August 5, 2005 and ending on September 27, 2005 which is equal to 54 days.

Patent Term Adjustment

13. If the PTO determines that Applicants' September 27, 2005 submission does not qualify as a supplemental reply within the meaning of 37 C.F.R. § 1.704(c)(8), the sum total of Applicant delay under 37 CFR § 1.704 is equal to 186 days as calculated in paragraph 11 above. Pursuant to 37 CFR § 1.704(a) the final Patent Term Adjustment is the total period of adjustment of the term of a patent under § 1.703(a) through (e), or 614 days (See paragraphs 3-6, above) less the period of time during which the Applicant failed to engage in reasonable efforts to conclude prosecution (processing or examination) of the application, or 186 days. Using this calculation the total Patent Term Adjustment for the present application as of the payment of the issue fee would be 614 -186 days, or 428 days.

14. If, on the other hand, the PTO determines that Applicants' September 27, 2005 submission qualifies as a supplemental reply within the meaning of 37 C.F.R. § 1.704(c)(8), the sum total of Applicant delay under 37 CFR 1.704 is equal to 186 days as calculated in paragraph 11 plus the 54 day delay described in paragraph 12 above, or 240 days. In this case, the final Patent Term Adjustment would be the total period of adjustment of the term of a patent under § 1.703(a) through (e), or 614 days (See paragraph 3-6, above) less the period of time during which the Applicant failed to engage in reasonable efforts to conclude prosecution (processing or examination) of the application, or 240 days. Using this calculation the total Patent Term Adjustment for the present application as of the payment of the issue fee would be 614 -240 days, or 374 days.

15. Other than the periods described above, Applicants do not believe there were any additional circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the present application as set forth in 37 C.F.R. § 1.704.

Statement Regarding Terminal Disclaimer

16. The above-identified application is not subject to a terminal disclaimer.

CONCLUSION

Applicants respectfully request that the patent term adjustment for the instant application be reconsidered in light of the facts and circumstances described above. In particular, Applicants maintain that the instant application is entitled to 428 or 374 days of patent term adjustment, depending on whether the patent term is docked for the 54 days between the filing of Applicants' August 4, 2005 and September 27, 2005 amendments.

In the event of a favorable decision based on this application, Applicants further request reimbursement of the fee which has been paid pursuant to 37 CFR § 1.18(e) for the present request, since payment of such fee was necessitated by a mistake of the Patent and Trademark Office.

If any further information is required, please call the undersigned at the number listed below. Please charge any additional fees due in connection with the filing of this paper, or credit any overpayment, to Deposit Account No. 08-3425.

Dated: March 20, 2006

Respectfully submitted,

By Michele Shannon
Michele Shannon

Registration No.: 47,075
HUMAN GENOME SCIENCES, INC.
Intellectual Property Dept.
14200 Shady Grove Road
Rockville, Maryland 20850
(301) 354-3930

KKH/MS/ba

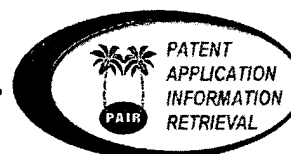
EXHIBIT A



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

PATENT APPLICATION INFORMATION RETRIEVAL



Patent Term Adjustment (PTA) for publication number: 09/880,748

			Days
Filing or 371(c) Date:	06-15-2001	USPTO Delay (PTO):	509
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL):	155
Post-Issue Petitions (days):	+0	Total PTA:	354
USPTO Adjustment (days):	+0	Explanation of Calculations	

Search Options

Assignments
Continuity Data
Display References
Image File Wrapper
File History
Publication Review
Published Documents

Patent Term Adjustment History

Date	Contents Description	PTO (days)	APPL (days)
12-21-2005	Mail Notice of Allowance	17	
12-16-2005	Notice of Allowance Data Verification Completed	↑	
12-16-2005	Case Docketed to Examiner in GAU	↑	
12-06-2005	IFW TSS Processing by Tech Center Complete	↑	
11-04-2005	Request for Extension of Time - Granted	↑	
09-27-2005	Rule 47 / 48 Correction of Inventorship Papers Filed	↑	
09-28-2005	Mail Advisory Action (PTOL - 303)	↑	
09-26-2005	Advisory Action (PTOL-303)	↑	
08-04-2005	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	↑	
08-11-2005	Date Forwarded to Examiner	↑	
08-04-2005	Amendment after Final Rejection	↑	
05-04-2005	Mail Final Rejection (PTOL - 326)	20	
04-29-2005	Final Rejection	↑	
01-18-2005	Substitute Specification Filed	↑	
01-31-2005	Date Forwarded to Examiner	↑	
01-18-2005	Supplemental Response	↑	35
01-18-2005	Workflow incoming amendment IFW	↑	↑
12-14-2004	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	↑	↑
12-20-2004	Date Forwarded to Examiner	↑	↑
12-14-2004	Response after Non-Final Action	↑	↑

12-14-2004	Workflow incoming amendment IFW		
09-14-2004	Reference capture on IDS		
09-14-2004	Mail Non-Final Rejection	207	
09-13-2004	Non-Final Rejection	↑	
12-05-2003	Information Disclosure Statement (IDS) Filed	↑	46
11-13-2003	Case Docketed to Examiner in GAU	↑	↑
11-05-2003	Case Docketed to Examiner in GAU	↑	↑
10-23-2003	Date Forwarded to Examiner	↑	↑
10-20-2003	Response to Election / Restriction Filed	↑	74
10-20-2003	Request for Extension of Time - Granted		↑
06-02-2003	Examiner Interview Summary Record (PTOL - 413)		↑
05-07-2003	Mail Restriction Requirement	265	↑
05-05-2003	Requirement for Restriction / Election	↑	
08-14-2002	Case Docketed to Examiner in GAU	↑	
06-27-2002	Case Docketed to Examiner in GAU	↑	
05-24-2002	Application Dispatched from OIPE	↑	
05-23-2002	Application Is Now Complete	↑	
03-08-2002	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in	↑	
03-08-2002	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	↑	
12-11-2001	Notice Mailed--Application Incomplete--Filing Date Assigned	↑	
12-07-2001	Correspondence Address Change	↑	
12-05-2001	IFW Scan & PACR Auto Security Review	↑	
11-28-2001	IFW Scan & PACR Auto Security Review	↑	
07-19-2001	CRF Is Good Technically / Entered into Database	↑	
06-15-2001	CRF Disk Has Been Received by Preexam / Group / PCT	↑	
06-15-2001	Initial Exam Team nn	↑	

RETURN RECEIPT CARD

(MPEP § 503)

**OIPE:**Please Date Stamp In
The Box Below And
Return To AddresseeApplication of:
Ruben et al.

Docket No.: PF523P1

Application Serial No.: 09/880,748-Conf. #5654

Art Unit: 1631

Filed: June 15, 2001

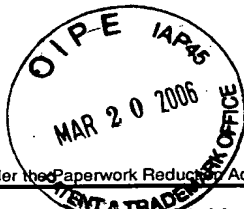
Examiner: C. Ly

Title: Antibodies That Immunospecifically Bind to
BLyS

The following documents were filed by Human Genome Sciences, Inc.
via hand delivery on July 7, 2003:

1. Return Receipt Postcard;
2. Fee Transmittal charging \$110 to deposit account (in duplicate);
3. Provisional Election Under 37 C.F.R. § 1.143 With Traverse;
4. Information Disclosure Statement with revised Form PTO/SB/08A and copies of each of references A-BD cited therein
5. Exhibit A showing an alignment of SEQ ID NO:327 with SEQ ID NO:2; and
6. A Petition for Extension of Time Under 37 C.F.R. § 1.136(a).

Sender's Initials: KKH/vr



Under the Paperwork Reduction Act of 1995, no person are required to respond to a collection of information unless it displays a valid OMB control number.

PTO/SB/17 (01-06)

Approved for use through 7/31/2006. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL For FY 2006

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 200.00

Complete if Known

Application Number	09/880,748-Conf. #5654
Filing Date	June 15, 2001
First Named Inventor	Steven M. Ruben
Examiner Name	P. A. Duffy
Art Unit	1645
Attorney Docket No.	PF523P1

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 08-3425 Deposit Account Name: Human Genome Sciences, Inc.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayment of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims Extra Claims Fee (\$) Fee Paid (\$)

_____ - 20 = _____ x _____ = _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims Extra Claims Fee (\$) Fee Paid (\$)

_____ - 3 = _____ x _____ = _____

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims

Fee (\$) Fee Paid (\$)

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$) Fee Paid (\$)

_____ - 100 = _____ / 50 _____ (round up to a whole number) x _____ = _____

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): 1455 Filing an application for patent term adjustment 200.00

SUBMITTED BY

Signature	<u>Michele Shannon</u>	Registration No. (Attorney/Agent)	<u>47,075</u>	Telephone	<u>(301) 354-3930</u>
Name (Print/Type)	<u>Michele Shannon</u>	Date	<u>March 20, 2006</u>		